

PROB. 12B
(7/93)

ORIGINAL

United States District Court

for the

DISTRICT OF HAWAII

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

FEB 15 2008

at 10 o'clock and 30 min. M
SUE BEITIA, CLERK

**Request for Modifying the Conditions or Term of Supervision
with Consent of the Offender**

(Probation Form 49, Waiver of Hearing is Attached)

Name of Offender: MALALA MAHIRA MCMOORE Case Number: CR 04-00445SOM-01

Name of Sentencing Judicial Officer: The Honorable Susan Oki Mollway
U.S. District Judge

Date of Original Sentence: 8/15/2005

Original Offense: Count 1: Possession of a Firearm with an Obliterated Serial
Number, in violation of 18 U.S.C. §§ 922(k) and 924(a)(1)(B),
a Class D felony

Original Sentence: Twelve (12) months and one (1) day imprisonment to be followed
by three (3) years supervised release with the following special
conditions: 1) That the defendant participate in a substance abuse
program, which may include drug and alcohol testing, at the
discretion and direction of the Probation Office. The defendant is
to refrain from the possession and/or use of alcohol while
participating in substance abuse treatment; 2) That the defendant
execute all financial disclosure forms requested by the Probation
Office and provide access to any requested financial information;
and 3) That the defendant shall submit his person, residence, place
of employment, or vehicle to a search conducted by the U.S.
Probation Office at a reasonable time and in a reasonable manner,
based upon reasonable suspicion of contraband or evidence of a
violation of a condition of supervision. Failure to submit to a search
may be grounds for revocation. The defendant shall warn any
other resident that the premises may be subject to search pursuant
to this condition.

Type of Supervision: Supervised Release Date Supervision Commenced: 9/26/2006

PETITIONING THE COURT

[X] To modify the conditions of supervision as follows:

General Condition: *That the defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of the commencement of supervision and at least two drug tests thereafter but no more than eight valid drug tests per month during the term of supervised release, unless there is a positive drug test in which event the maximum shall increase to up to one valid drug test per day (mandatory condition).*

Special Condition No. 4: *That the defendant is prohibited from the possession and use of alcohol.*

Special Condition No. 5: *That the defendant shall perform fifty (50) hours of community service as directed by the Probation Office.*

CAUSE

<u>Violation Number</u>	<u>Nature of Noncompliance</u>
1. General Condition	On 1/20/2008, the offender engaged in conduct constituting Operating a Vehicle Under the Influence of an Intoxicant, in violation of Hawaii Revised Statutes § 291E-0061.

On 1/23/2008, the offender called the undersigned and reported that he was arrested by the Honolulu Police Department on 1/20/2008 for Operating a Vehicle Under the Influence of an Intoxicant (OVUII), in violation of Hawaii Revised Statutes § 291E-0061, a petty misdemeanor. He stated that on the evening of 1/19/2008, he had attended a party at Cirque Hawaii, a nightclub in Waikiki, and admitted to drinking "at least four (4) mixed drinks." The offender also admitted that he "used bad judgement" and that he "should have gotten a ride home."

According to the police report, on 1/20/2008, at approximately 4:10 a.m., a police officer observed the offender swerving between lanes on Kalanianaʻole Highway traveling eastbound. The report stated that in addition to dangerously weaving in and out of traffic, the offender was driving his vehicle in excess of the speed limit. The officer subsequently signaled for the offender to stop.

Upon approaching the offender's vehicle, the officer noted that he detected a strong odor of an alcoholic type beverage emitting from the offender's breath. He also observed that the offender had red, glassy eyes and that his face had a flush complexion. Based upon those observations, the offender was asked to participate in the standardized field sobriety test (SFST). As the offender exited his vehicle, he had to grab the roof of his vehicle with his left hand to maintain his balance. The officer also noted that the offender had a yellow paper wristband on his right wrist. The offender related that he had gotten it at Cirque Hawaii.

The offender failed the SFST and refused to submit to a Preliminary Alcohol Screening test. He was subsequently arrested for OVUII and transported to the main police station where an Intoxilyzer was administered indicating the offender's blood alcohol content was 0.187%. The legal limit for blood alcohol content in the state of Hawaii is 0.08%.

As a risk control measure and to address his drinking, the offender will be re-enrolled in substance abuse treatment which will include drug and alcohol testing. We are also requesting the addition of a special condition prohibiting the offender from alcohol possession and use to deter any further drinking throughout the remainder of his term of supervision.

Furthermore, as a sanction for his non-compliance, the offender will be required to complete fifty (50) hours of community service. The proposed modification for community service is intended to impress upon him the seriousness of his violation.

The offender has accepted full responsibility for the above-mentioned violation. Further to his credit, the offender has maintained stable employment since the commencement of supervision and is currently enrolled in the Carpenter's Union Local 745 apprenticeship program. It should also be noted that the offender successfully completed substance abuse treatment on 4/23/2007, with a favorable prognosis for continued sobriety. As of this date, all drug tests submitted by the offender have been negative.

It is for the mitigating factors stated above that we wish to continue to work with the offender in the community. The offender has been warned that future noncompliance may result in the request for adverse Court action. Also at this time, to assist in our monitoring of the offender, we are requesting the proposed modification to the mandatory drug testing condition (General Condition). In light of U.S. v. Stephens, this modification will allow for additional drug testing outside any drug testing that is considered part of treatment. Considering the offender's substance abuse history and recent arrest for OVUII, this modification is easily justified.

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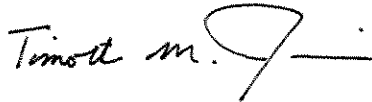
Attached is a signed Waiver of Hearing to Modify Conditions of Supervised Release. The offender waives his right to a hearing and to assistance of counsel. The offender agrees to the modification of the conditions of supervised release. The offender's attorney and the U.S. Attorney's Office have been notified of the proposed modification and have no objections.

Respectfully submitted by,



SYDNEY L. FLEMING
U.S. Probation Officer

Approved by:




TIMOTHY M. JENKINS
Supervising U.S. Probation Officer

Date: 2/12/2008

THE COURT ORDERS:

- ☒ [X] The Modification of Conditions as Noted Above
☐ [] Other


SUSAN OKI MOLLWAY
U.S. District Judge

2/12/08

Date

NOTICE REGARDING MODIFICATION OF CONDITIONS

The defendant understands that any modification of court-ordered conditions is not a waiver of those conditions or of any consequence of violating those conditions. Violations that have preceded this or any modification of conditions may be considered by the court as a basis for revoking supervised release or probation, especially, but not only, in the event of a future violation, whether any such future violation is similar to or different from any preceding violation.

The absence of this notice does not confer, and should not be interpreted by the defendant as conferring, any rights on the defendant. The absence of this notice does not indicate, and should not be interpreted by the defendant as indicating, any position by the court or by the defendant. Even in the absence of this notice, supervised release or probation may, in the future, be revoked based on violations occurring before this or any other modification of conditions.

Agreed to and acknowledged:

X _____
Defendant

Print Name: Malala McMoore

Date: 2/6/08

PROB 49
(5/96)

United States District Court

District of Hawaii

Waiver of Hearing to Modify Conditions of Probation/Supervised Release and/or Extend Term of Supervision


I have been advised and understand that I am entitled by law to a hearing and assistance of counsel before any unfavorable change may be made in my Conditions of Probation and Supervised Release and/or my period of supervision being extended. By "assistance of counsel," I understand that I have the right to be represented at the hearing by counsel of my own choosing if I am able to retain counsel. I also understand that I have the right to request the court to appoint counsel to represent me at such a hearing at no cost to myself if I am not able to retain counsel of my own choosing.

I hereby voluntarily waive my statutory right to a hearing and to assistance of counsel. I also agree to the following modification of my Conditions of Probation and Supervised Release and/or to the proposed extension of my term of supervision:

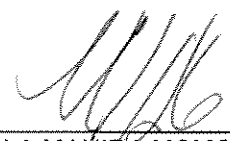
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- Special Condition 4: That the defendant is prohibited from the possession and use of alcohol.*
- Special Condition 5: That the defendant shall perform fifty (50) hours of community service as directed by the Probation Office.*

Witness:


SYDNEY L. FLEMING
U.S. Probation Officer

Signed:


MALALA MAHIRA MCMOORE
Supervised Releasee

2/6/08
Date